IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18/09/2002

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THE HONOURABLE MR. JUSTICE V.KANAGARAJ

Writ Petition No.19053 of 2002

S.Palanivel .. Petitioner

-Vs-

1. Office of the Managing Director,
Tamilnadu State Transport Corpn.,
Villupuram.

2. The General Manager (Administration),
Tamilnadu State Transport Corpn.,
Villupuram. .. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, as stated therein.

For petitioner : Mr.AR.L.Sundaresan

For respondents: Mr.G.Muniratnam

:O R D E R

Mr.G.Muniratnam, learned counsel, takes notice for the respondents.

2. Writ Petition praying to issue a Writ of Certiorari calling for the records of the second respondent in KK. No.67/N7/TNSTC/Express Division 1/2001 dated 8.5.2002 purporting to discharge the service of the petitioner with effects from 7.6.2002 and quash the same.

3. In the affidavit filed in support of the writ petition, the petitioner would submit that he joined the services of the first respondent Transport Corporation as a driver on 31.8.1989; that he was discharging his duties as the driver in route No.340-A in the vehicle bearing Registration No.TN 32.N-0518 and while so, on 21.5.1995 at about 4 .45 a.m., when he started his trip and driving his vehicle towards Chidambaram, an Omni bus bearing Registration No.TN07 T 0939, which was coming from the opposite side, collided against the bus driven by the petitioner, resulting in the two legs and the chest bones of the petitioner got injured and damaged and hence he was admitted in the Government Hospital, Kumbakonam and later treated at Tanjore

Medical College Hospital and that he was also granted the leave wages till 31.8.1996; that he re-joined duty on 1.9.1997 and in consideration of his incapacity to drive vehicles, the respondents allotted light work posting him in the parking division.

4. The further case of the petitioner is that after a lapse of five years, by letter dated 29.3.2001, the first respondent referred him to the Medical Board for examination and by letter dated 27.7.2001, the Board issued a certificate stating that he was unfit to be a driver; that based on the certificate, the second respondent issued a show cause notice dated 23.1.2002 seeking his explanation as to why he should not be discharged from service within seven days from the date of receipt of the notice; that he submitted his explanation stating that the accident was not due to his fault or negligence, but only due to the fault of the Omni bus driver and even the case had also been registered only against the Onmi bus driver; but, however, to his shock and surprise the second respondent, without any application of mind, passed his order dated 8.5.2002 purporting to discharge him from service on medical grounds with one month notice period directing the order to take effect from 7.6.2002. In these circumstances, pleading that the petitioner being left with no other alternative remedy, has come forward to file the above writ petition on certain grounds as brought forth in the ground of writ petition.

5. In the counter filed by the first respondent, besides generally denying the averments of the writ petition, it would specifically be denied that the petitioner was discharging his duties sincerely and without any blemish; that the accident with the Omni bus on 21.5.1995 had taken place only due to his negligent and rash driving resulting in his injury sustained and treatment taken; that the Medical Board issued a Certificate dated 27.7.2001 stating that the petitioner is unfit to be a driver and hence the show cause notice dated 23.1.2002 was issued, calling upon him to explain under the show cause notice as to why he should not be discharged from service on medical grounds,; that having not been satisfied with the explanation of the petitioner and as per G.O.Ms.No.746 Transport dated 2.7.1981, the respondents have passed the order dated 8.5.2002 discharging the petitioner from service on medical grounds with effects from 7.6.2002, after the expiry of one months notice period; that as per said G.O., the petitioner would be provided with an alternate employment like Helper, depending upon his qualification as fresh entrant only in the scale of pay or consolidated pay admissible to the new post; that G.O.Ms.No.86 dated 8.2.1986 would not apply to the case of the petitioner, since it is applicable only to the Government servants; that the G.O.Ms.No.746 dated 2.7.1981 alone is applicable to the case of the drivers working in the State Transport Undertaking; that as per this G.O., the petitioner had to be discharged from service on medical grounds and after settling the service benefits, he would be considered for an alternate employment as per his qualification, etc. as Helper as and when vacancy arises according to the seniority list maintained by the respondents for the discharged employees on medical grounds; that he could not be provided with alternative employment with continuity of service with pay protection; that first his service benefits must be settled and only then, the request of the

petitioner for the alternate employment would be considered; that the impugned order is not arbitrary; that there is a ban for fresh appointment, as a policy of the Government, it could not be overlooked to provide an alternative employment to the petitioner. On such grounds, the first respondent would pray to dismiss the writ petition.

6. During arguments, the learned counsel appearing on behalf of the petitioner would reiterate the points raised in the writ petition, with no new fact or circumstance or law being brought forth.

7. On the contrary, the learned special counsel appearing for the Transport Corporation would submit that the petitioner is entitled to an alternate job, since being a medically discharged person, as per G.O. Ms.No.746 dated 2.7.1981 and in accordance with the said G.O., he would be appointed afresh in such capacities mentioned therein. But only after discharging and settling all the benefits, his case could be considered for fresh appointment, that too subject to the seniority list maintained for the appointment of such categories. At this juncture, the learned counsel would cite a recent decision of the Division Bench of this Court reported in (2002) 12 MLJ 61 (THE MANAGEMENT OF D.A.T.C. LIMITED vs. THE PRESIDING OFFICER, I ADDITIONAL LABOUR COURT, MADRAS), wherein it had occasion to dissect G.O.Ms.No.746 dated 2.7.1981 and to hold as follows:

"... There is no non-employment or termination of services of the respondent therein and the respondent was also rightly discharged on medical grounds and that he is entitled to be appointed as per G.O. Ms. No.746 dated 2.7.1981 r/w. clause 82 of the settlement under Section 12(3) of the Industrial Disputes Act, 1947 and paid salary accordingly."

On such grounds, the learned counsel would justify the stand of the Corporation in discharging the petitioner on medical grounds in accordance with the said G.O.

8. In consideration of the facts pleaded by parties, having regard to the materials placed on record and upon hearing the learned counsel for both, it comes to be known that the case of the petitioner is simple, that is, he was the driver in the first respondent Transport Corporation; that his vehicle met with an accident colliding with an Omni bus, in which, he sustained somewhat serious injuries, for which, he was not only treated but also offered light assignments, but however, after the receipt of the report from the Medical Board, on examination of the petitioner medically, wherein he has been found medically unfit to act as the driver and in accordance with G.O.Ms.No.746 dated 2.7.1981, he was discharged from the services of the respondents Corporation on medical grounds and that he would be appointed afresh in light postings, after settling his retiral benefits in accordance with the said G.O. However, the petitioner w ould file the above writ petition to quash the order impugned, whereunder, his services had been discharged with effects from 7.6.2002.

9. It is not only that the G.O. is clear, but also the same has been upheld by the Division Bench, and since the petitioner is admittedly incapacitated from operating as a driver, discharging him on medical grounds is quite justifiable, and only in accordance with G.O.Ms. No.746 dated 2.7.1981, an alternate job would be provided for in the order of seniority, after settling the retiral benefits and this would be a fresh appointment with no continuity of service or parity of service rendered already. Therefore, the petitioner has to take his turn for getting appointed afresh in the services of the Corporation in different capacities and in the circumstances of the case, this is the only course open for the petitioner, particularly when the stand taken by the Corporation supported by the said G.O. has been upheld by the Division Bench of this Court.

10. Needless to mention that the petitioner has no axe to grind in the writ petition and testifying the validity of the discharge order passed by the second respondent dated 8.5.2002 should necessarily fail.

In result, there is no merit in the writ petition and it becomes liable only to be dismissed and the same is dismissed accordingly. No costs.

Consequently, WPMP No.26200 of 2002 is also dismissed.

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To
1. The Managing Director,
Tamilnadu State Transport Corpn.,
Villupuram.

2. The General Manager (Administration),
Tamilnadu State Transport Corpn.,
Villupuram.